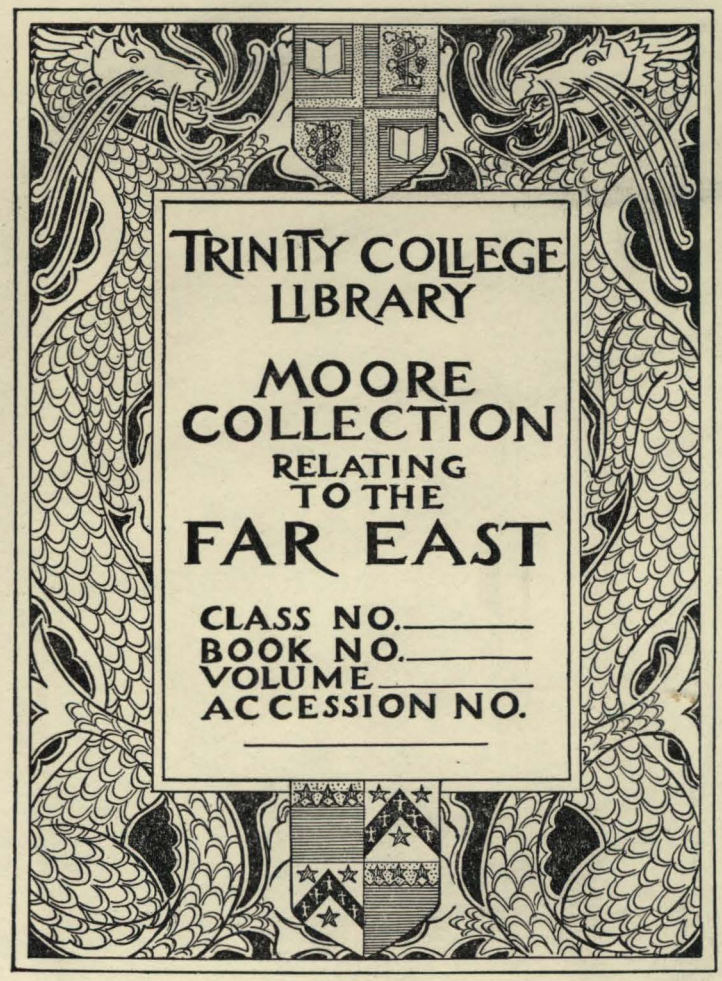
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EXCLUSION OF CHINESE LABORERS.

COMMITTEE ON IMMIGRATION, U. S. SENATE,
January 23, 1902.

ARGUMENT OF MR. JOHN W. FOSTER ON THE TREATY RIGHTS OF CHINESE SUBJECTS AS TO ADMISSION AND RESIDENCE IN THE UNITED STATES.

GENTLEMEN OF THE COMMITTEE:

When I applied for an opportunity to be heard before the Committee your chairman very kindly expressed a desire that I should give you a sketch of the history of our diplomatic relations with China, with a view to a better understanding of our present treaty obligations.

It is not my purpose to discuss the subject of Chinese immigration in its relation to the labor problem in the United States, nor the general policy of exclusion, but to confine myself to the questions which naturally arise in connection with existing treaty rights and obligations. My review of the treaty negotiations between the United States and China must necessarily be brief, but I am gratified to say that they have been marked by a high sense of honor and fair dealing on the part of the Executive department of the Government of the United States. It is also a satisfaction to note that in every instance where the Executive department of the United States has approached China, with a view to changes in our treaty relations in the interest of our own citizens, that government has met them in a generous spirit of complaisance, and has modified its treaties in accordance with our desire.

Our first treaty with China was negotiated by one of our ablest statesmen, Caleb Cushing, in 1844, and marked a great advance in trade and in the recognition of the rights of American citizens in that Empire. But the rapid development of commerce in the Orient made necessary a revision of the treaties of the Western nations, and Great Britain and France in 1857 invited the United States to join in an armed demonstration to compel China to grant the additional commercial privileges which they desired. Mr. Marcy, then Secretary of State, instructed our minister to inform the allies that "the President does not believe that our relations with China warrant the last resort, * * * [which] means war;" and the minister was instructed to pursue peaceful methods to bring about the desired revision of the treaty of 1844. (Treaties of the U. S., p. 1257.) This was successfully accomplished by the treaty of 1858, which took the place of the treaty of 1844, and by it we secured from China all that Great Britain and France obtained after they had sent their armies to Peking.

But with the march of time a new situation of affairs in the Pacific was developed. In order to unify our nation and bring the Pacific States into easy communication with the rest of the Union, the con-

struction of a railroad across the continent and over the mountains became a necessity. Labor was scarce on the Pacific coast, the construction of the railroad was delayed, and a resort was had to China for workmen. They came in large numbers, and by their aid that great trans-continental work was being carried to successful completion. But the Chinese were brought in under a contract system which was practical slavery, naturally repugnant to the views of our Government, much as it desired the presence of the workmen, and the system was likewise condemned by the Chinese Government. The year 1868 was made distinguished by the arrival in the United States of a large embassy from China, the first ever sent abroad, composed of some of the highest dignitaries of the Empire, but at their head was an American, Anson Burlingame, who had resigned the post of Minister to accept this unique position.

With this Embassy Secretary Seward negotiated what were termed "additional articles to the treaty of 1858." These articles secured greater privileges to American citizens in China, recognized the autonomy of the Empire, disavowed any intention to interfere in its internal affairs, prohibited the coolie contract system, guaranteed the free and unlimited immigration of Chinese into the United States, and extended to them the treatment of the most favored nation.

The treaty of 1868, known as the Burlingame treaty, was hailed as a great triumph of American diplomacy, and the President, in communicating its consummation to Congress, spoke of it as a "liberal and auspicious treaty." (6 Richardson's Messages, 690.) Some delay, however, occurred in its ratification by the Chinese Government, and serious uneasiness was felt in the United States lest it should fail to be carried into effect. Under President Grant's direction, Secretary Fish instructed our Minister in Peking to exert his influence with the Chinese authorities to bring about its early ratification. He wrote: "Many considerations call for this besides those which may be deduced from what has gone before in this instruction. Every month brings thousands of Chinese immigrants to the Pacific coast. Already they have crossed the great mountains and are beginning to be found in the interior of the continent. By their assiduity, patience, and fidelity, and by their intelligence, they earn the good will and confidence of those who employ them. We have good reason to think this thing will continue and increase," and the Secretary said it was welcomed by our people. (1 Wharton's International Digest, p. 457.)

The treaty was finally ratified by China, it was followed by the completion of the Pacific Railroad, and our Government congratulated itself on being instrumental in bringing China out of her seclusion and inducing her "to march forward," as Mr. Fish expressed it. Ten years after this treaty was signed, President Hayes, in a message to Congress, thus spoke of its leading provision: "Unquestionably the adhesion of the Government of China to these liberal principles of freedom in emigration, with which we were so familiar and with which we were so well satisfied, was a great advance towards opening that Empire to our civilization and religion, and gave promise in the future of greater and greater practical results in the diffusion throughout that great population of our arts and industries, our manufactures, our material improvements, and

the sentiments of government and religion which seem to us so important to the welfare of mankind." (7 Richardson's Messages, 516).

But for a third time a situation was developed which led our Government to ask for a modification of our treaty relations with China. This was the demand which arose on the Pacific Coast that some check should be placed upon Chinese immigration, in the interest of American labor. This demand was so persistent, especially in view of a pending presidential campaign, that the President gave an assurance that an effort would be made to change the treaty. Accordingly, in 1880, he dispatched a commission to China to negotiate for such change in the treaty of 1868 as would allow the United States to restrict the immigration of Chinese laborers. This commission was composed of President Angell of Michigan University, John F. Swift of California, and William H. Trescot, the diplomatist, men of ability and distinction. They were cordially received at Pekin and attentively heard. The Chinese Government, however, was reluctant to change the treaty of 1868, which had been entered upon at the urgent request of the United States. But when it was insisted that some modification was absolutely necessary for the internal peace of our people, China consented to such modification as would not essentially change the principle of that instrument. And thereupon the immigration treaty of 1880 was agreed to, restricting the coming of Chinese laborers.

In communicating to the Secretary of State the signature of the new treaty of 1880, the American Commissioners wrote:

> In conclusion, we deem it our duty to say to you that during the whole of this negotiation the representatives of the Chinese Government have met us in the fairest and most friendly spirit. They have been, in their personal intercourse, most courteous, and have given to all our communications, verbal as well as written, the promptest and most respectful consideration. After a free and able exposition of their own views, we are satisfied that in yielding to the request of the United States, they have been actuated by a sincere friendship and an honorable confidence that the large powers recognized by them as belonging to the United States, and bearing directly upon the interests of their own people, will be exercised by our Government with a wise discretion, in a spirit of reciprocal and sincere friendship, and with entire justice. (Foreign Relations of U. S., 1881, p. 197.)

But even this treaty, which had been obtained from China so reluctantly, yet with the generous exhibition of friendship on her part just described, did not prove satisfactory to the increasing demands of the labor unions. Before ten years were passed, under the spur and excitement of the presidential campaign of 1888, and upon the hesitation of the Chinese Government to make a further treaty modification, the Scott Act was passed by Congress, which was a deliberate violation of the treaty of 1880 and was so declared by the Supreme Court, but under our peculiar system it became the law of the land. Our Government had thus flagrantly disregarded its solemn treaty obligations. Senator Sherman, then chairman of the Committee on Foreign Relations, stated in the Senate that we had furnished China a just cause for war. But, at the request of the Secretary of State, that Government, for the fourth time, consented to negotiate a new treaty of immigration, in 1894, which took the place of the treaty of 1880, and by means of which the Scott Act was modified so as to allow the Chinese laborers lawfully in the United States to visit China and return under certain restrictions. The treaty was limited by its terms to ten years.

The foregoing hasty sketch of our treaty relations with China shows that every modification made has been at the request of the United States, and that in each instance China has acceded to the desires of our Government. Such being the case, I feel sure you will agree with me that it is our duty as a nation strictly and in good faith to observe the spirit and the letter of these treaty stipulations into which our Government has solemnly entered.

I now propose to submit three propositions for your consideration and guidance in the legislation to be enacted by Congress, all of which are based upon our treaty obligations.

First. Any law passed by the present Congress which continues the exclusion of Chinese laborers beyond 1904 will be not only without international authority, but will be in violation of treaty stipulations.

Second. The exclusion laws should not be made applicable to all our insular possessions.

Third. The existing exclusion laws and the new legislation proposed are, in several important particulars, in clear disregard of the treaty stipulations.

I now proceed to establish these propositions: First. The treaty of 1868 was modified by the treaty of 1880. The preamble to the latter cites the treaties of 1858 and 1868, and says: "Whereas the Government of the United States * * * desires to negotiate a modification of the existing treaties which shall not be in direct contravention of their spirit," &c. The treaty of 1894 was substituted for that of 1880, and in its Article VI, it is provided that "this convention shall remain in force for a period of ten years," with the usual provision for notice of termination. That treaty will come to an end, upon due notice from China, on December 7, 1904, ten years from the date of the exchange of ratifications. After that date all the provisions of the treaty of 1894 will cease to have any effect. It cannot be claimed that the continuance of the exclusion laws is warranted by the declaration of China in the preamble of the treaty that she "desires to prohibit the emigration of such laborers to the United States." In the first revision of the treaty of 1880, the limitation was fixed at twenty years, but this was objected to by China, it was only on condition that the term was made ten years that she consented to the treaty of 1894. (U. S. For. Rel., 1888, part I, pp. 396–8, 403; 1894, p. 176.)

But the expiration of that treaty does not leave the two Governments without any provisions on the subject of immigration. The stipulations contained in Articles V and VI of the treaty of 1868 are revived and come into full force and effect. It is very clear that it was not the intention of either Government to abrogate that treaty in the negotiation of the treaties of 1880 and 1894. I have already cited the preamble to the treaty of 1880, to that effect. President Arthur, in a message to Congress, says "the negotiators of the treaty [of 1880] have recorded with unusual fullness their understanding of the sense and meaning." * * * (8 Richardson, p. 114.) In their report of the negotiations the American commissioners stated that the Chinese plenipotentiaries would not consent to "the absolute abrogation of the provisions of the Burlingame treaty [1868] relating to the free intercourse between the people of the two countries." After satisfactory explanations by the

American commissioners, they report that they "proceeded to the consideration of such modification of the Burlingame treaty as would be acceptable to both Governments." (U.S. Foreign Relations, 1881, p. 196.) And in announcing the final signature of the treaty the commissioners state that the essential point in the negotiations and in the treaty was to grant the United States the power "to regulate the immigration of Chinese labor without absolutely abrogating the treaties by which immigration into the United States was recognized." (U. S. For. Rel., 1881, p. 189.) The negotiations and the terms of the treaties of 1880 and 1894 make it clear that their only effect was to modify and temporarily suspend the stipulations of the Burlingame treaty as to free immigration, and President Arthur communicated this fact to Congress in his message of 1882. In referring to the treaty of 1880, he says: "A new treaty was concluded with China. Without abrogating the Burlingame treaty, it was agreed to modify it," &c. (8 Richardson's Messages, 113.)

Hence it follows that the termination of the treaty of 1894 by limitation revives in full force the provisions of Articles V and VI of the treaty of 1868. That convention contains eight separate articles, relating to a variety of subjects, but Articles V and VI were the only ones modified and suspended. Such a revival of treaty rights is not unusual in international practice. A noted example in our own history is doubtless very well known to every member of this Committee, but it may be well to recall it by way of illustration.

In 1818 the United States and Great Britain made a treaty embracing various important subjects. The first article limited and regulated the fishing rights of Americans in Canadian waters, coasts and ports; the second related to a boundary line; the third recognized the joint occupation of the Oregon region; the fourth continued in force a commercial treaty; the fifth adjusted certain questions growing out of the war of 1812. In 1854 the two Governments entered into a reciprocity treaty for a term of ten years, whereby the first article of the treaty of 1818 was expressly modified and some of its provisions were suspended. In 1866 the reciprocity treaty was terminated, and at once, and without any notice to that effect, Article I of the treaty of 1818 as to the fisheries revived and was recognized by both Governments as in full force. Again, in 1871, the two Governments made what is known as the Treaty of Washington, adjusting the "Alabama claims" and a number of other important questions. Among these was a new arrangement as to the fisheries, and Article I of the treaty of 1818 was once more modified and suspended. After ten years' duration the provision of the Treaty of Washington as to the fisheries came to an end by limitation, and a second time the first article of the treaty of 1818, of its own vigor and without other action of the Governments, revived and has continued to the present day controlling the rights of American fishermen in Canadian ports and waters. As is well known to you, that stipulation is very unsatisfactory to our Government and has been the occasion of great hardship and inconvenience to a large and influential body of our citizens. Repeated efforts have been made to have it abrogated or modified, but thus far without avail, and our Government continues to recognize it as a binding international obligation.

With this exact parallel before us, I need say no more to convince

you that when the treaty with China of 1894 is terminated in 1904, Articles V and VI of the treaty of 1868 will again come into full force. They are as follows:

ARTICLE V.

The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free immigration and emigration of their citizens and subjects, respectively, from the one country to the other, for purposes of curiosity, of trade, or as permanent residents. The high contracting parties, therefore, join in reprobating any other than an entirely voluntary emigration for these purposes. They consequently agree to pass laws making it a penal offense for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take citizens of the United States to China or to any other foreign country, without their free and voluntary consent respectively.

ARTICLE VI.

Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation. And reciprocally, Chinese subjects visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United states in China, nor upon the subjects of China in the United States.

I think I have made it clear that these Articles will, in the absence of any other treaty agreement, come into force in 1904, and I have, therefore, established my first proposition that any law passed by the present Congress which continues the exclusion of Chinese laborers beyond 1904, will be not only without international authority, but will be in violation of treaty stipulations. This fact seems to be recognized by some of the bills already introduced on this subject in the Senate.

My second proposition is that the exclusion laws should not be made applicable to all our insular possessions. I am not able to cite any specific provision of our treaties with China to establish this, but I claim (1st) that it is sustained by the principle of international law known as "the comity of nations," and (2d) that the American commissioners who went to Peking secured the consent of the Chinese Government to the modification of Articles V and VI of the treaty of 1868 by that of 1880, upon certain assurances given by them which do establish my proposition.

The whole history of the Chinese exclusion question and the negotiations resulting in the treaty of 1880 show that the complaint against the immigration of Chinese laborers was that it was detrimental to white labor, that by competition it reduced the scale of wages, and its tendency was demoralizing to the American workman. The treaty of 1880 was made in the interest of the laboring people of the United States as then constituted, and especially of the Pacific coast. When the Hawaiian Islands were annexed to the United States, in 1898, there was a large Chinese population in the islands, and the immigration of laborers was permitted and regulated by law. At the time of the annexation of the Philippine Islands a still larger Chinese population was found there, and free intercourse and immigration between those islands and China had been maintained for centuries.

Such a state of things as was brought about by the annexation of these two groups of islands could not have been and was not contem-

plated by the negotiators of the treaties of 1880 and 1894. These islands are much nearer to the Chinese Empire than is the territory of the United States proper, and it cannot be presumed that the consent of that Government could have been obtained for their inclusion had they been a part of the American Union when those treaties were negotiated. The contrary is clearly apparent from an examination of the report of the negotiations made by the American commissioners. In view of these facts, it was the duty of the Government of the United States to have sought the consent of China before extending to those islands the exclusion laws of the United States based upon the treaties made at a time and under circumstances which would not have warranted such action. The comity of nations was violated by such extension.

But further than this, the American commissioners contemplated the very state of affairs which now exist in these two groups of islands and more especially of Hawaii, and they gave the Chinese Government the assurance that to such a state of affairs the exclusion of Chinese laborers authorized by the treaty should not be applied. It appears from their report that during the progress of the negotiations the Chinese plenipotentiaries proposed various methods to enforce the desired exclusion, for instance, that further Chinese laborers might be prohibited in California, where the greatest opposition to them existed; or that only a certain number might be admitted each year; that the immigration might be entirely suspended for a series of years and then renewed; or that it should be limited to the number then in the United States, immigrants supplying only the places of those returning to China. None of these propositions seemed acceptable to the American commissioners, who claimed that their Government should be entrusted with the discretion and power to adopt such laws as it should find necessary to meet the situation. Thereupon the Chinese plenipotentiaries "asked whether the United States commissioners could give them any idea of the laws which would be passed to carry such power into execution?" To this the American Commissioners responded, as follows:

> It would be as difficult to say what would be the special character of any act of Congress as it would be to say what would be the words of an edict of the Emperor of China to execute a treaty power. That the great nations discussing such a subject must always assume that they will both act in good faith and with due consideration for the interests and friendship of each other. That the United States Government might never deem it necessary to exercise this power. It would depend upon circumstances. If Chinese immigration concentrated in cities where it threatened public order, or if it confined itself to localities where it was an injury to the interests of the American people, the Government of the United States would undoubtedly take steps to prevent such accumulations of Chinese. If, on the contrary, there was no large immigration, or if there were sections of the country where such immigration was clearly beneficial, then the legislation of the United States under this power would be adapted to such circumstances. For example, there might be a demand for Chinese labor in the South and a surplus of such labor in California, and Congress might legislate in accordance with these facts. In general the legislation would be in view of, and depend upon, the circumstances of the situation at the moment such legislation became necessary.

The Chinese plenipotentiaries said that this statement was satisfactory, and "that China did not in any way mistrust the motives and purposes of the United States, nor for an instant doubt that the Government of the United States would act with entire fairness towards the Chinese." (U. S. For. Rel., 1881, p. 185.)

Among the other assurances given by the United States commis-

sioners in the foregoing extract is the statement that if there were sections of the country where Chinese immigration was clearly beneficial, or where there was a demand for such labor, the legislation would be adapted to such circumstances. President Arthur, in 1882, called the attention of Congress to these assurances, quoting them in detail, and said that a time might come in the future when there would be "sections of the country where this species of labor [that of the Chinese] may be advantageously employed, without interfering with the laborers of our own race." (8 Richardson's Messages, 117.) I respectfully submit that such a state of affairs exists in our possessions in the Pacific ocean, and that an opportunity is now afforded the Congress of the United States to redeem the pledges made by our commissioners at Peking in 1880, and to justify the expectation of the Chinese plenipotentiaries that our Government "would act with entire fairness towards the Chinese."

I think it can be shown that this state of affairs exists in the Philippines, but as the government there is in a transition stage, I desire now to direct your attention more particularly to the conditions of labor in the Hawaiian Islands. I have referred to the fact that when they were annexed to our Union, Chinese immigration was permitted under laws which were carefully framed with a view to controlling the number to be admitted, and which required the immigrant to confine his labor to agriculture, to wit, on the sugar plantations or in the rice fields. The system was found to work well. But with annexation a sudden stop came to this immigration, and the planters had to resort to Japanese labor, which rapidly swelled its numbers. However meritorious are the Japanese in other respects, it is the general judgment in Hawaii that they are not so well adapted as the Chinese for plantation work; and the latter are greatly desired and urgently needed for the continued prosperity of the islands.

The condition of the Hawaiian Islands is set forth in much detail in the Annual Report of the Governor of the Territory to the Secretary of the Interior, dated August 28, 1901. In discussing the labor question, he says: "Much has been said about the employment of large numbers of Chinese and Japanese by the planters. In answer to such criticism, it may safely be said that such action never has, does not now, and never will interfere with either American skilled or unskilled labor." Referring to the great difficulty, since annexation, of procuring a sufficient supply of labor, he continues:

> This condition of affairs presents a most serious question as affecting our principal industry. All sugar-plantation stocks have fallen far below their former value, owing to the uncertainty of the labor supply. This has had the effect of producing a stringency in the money market from which many have suffered loss. If no relief is forthcoming, the most disastrous results will surely follow. The many skilled laborers who have until now found abundant work at high wages will no longer find employment, for further developments and improvements will not be carried on. Our trade with the mainland will be greatly diminished, while the small investor will likely lose his holdings, and the larger owner will be deprived of his income. An increased immigration of Japanese would not entirely relieve the situation; for as they now constitute the great majority of laborers on the plantations, it would seem to be a sounder policy to augment the Japanese immigration with some other nationality. Under the laws of the Republic of Hawaii, Chinese were allowed to enter the country for a limited number of years and upon the express condition that they should engage only in agricultural pursuits.
>
> It has been demonstrated beyond a doubt that the unskilled labor upon the plantation must be furnished by other than Americans. This would be true even if the large estates were

divided into small holdings. It is simply a physical impossibility for the Anglo-Saxon satisfactorily to perform the severe labor required in the sugar fields. This being true, Hawaii is entitled to legislation favorable to its greatest prosperity. The presence of large numbers of Chinese and Japanese has not proved detrimental either to skilled or unskilled American labor.

The Governor then appends a table of rates of wages of mechanics, which is as follows:

Carpenters,	$3.50–$4.50
Foreman, Carpenters,	5.00– 7.00
Plasterers,	6.00
Bricklayers,	6.00– 8.00
Plumbers,	5.50
Foreman, Plumbers,	6.50– 7.00
Painters,	3.50– 4.50
Blacksmiths,	4.50– 5.00

(See Report of Governor of the Territory of Hawaii, 1901, pp. 66–64.)

This statement of the Governor of the Territory is supported by the general testimony of the people of the islands, and presents the exact conditions contained in the assurances given by the American commissioners to the Chinese Government in 1880. Here is a "section of the country where such [Chinese] immigration is clearly beneficial, * * * where there is a demand for Chinese labor" from all the important interests of the islands, and where it cannot interfere with or prejudice white labor. The coming of the Chinese to the islands can be easily regulated as to numbers, as under the former Hawaiian law, and they can be restricted to the sugar and rice fields, where no Anglo-Saxon can work; and it will not be difficult to prevent their coming from the islands to the States. I, therefore, appeal to you to make good the solemn pledge of the Commissioners at Peking in 1880, and do an act of international justice, which will at the same time revive the languishing industries of those islands.

My third proposition is that the existing laws and the new legislation proposed are, in several important particulars, in clear disregard of treaty stipulations.

Article IV of the treaty of 1894 stipulates "that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens." A similar stipulation appears in the treaties of 1868 and 1880.

Let us examine what are "the rights given by the laws of the United States to citizens of the most favored nation." Take as an example the treaty with Japan, an Oriental country, a near neighbor to China. The treaty of 1894, negotiated the same year of the treaty with China, in its Article I provides that the citizens or subjects of each country "shall have free access to the courts of justice in pursuit and defense of their rights; they shall be at liberty equally with native citizens or subjects to choose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts, and in all other matters connected with the administration of justice they shall enjoy all the rights

and privileges enjoyed by native citizens or subjects." In the treaty of 1859 with Paraguay, the smallest of all the Spanish-American States, having a population less than Washington city, it is provided that "the citizens of either of the two contracting parties in the territories of the other shall enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice for the prosecution and defense of their just rights; they shall enjoy, in this respect, the same rights and privileges as native citizens; and they shall be at liberty to employ, in all causes, the advocates, attorneys, or agents, of whatever description, whom they may think proper." (Compilation of Treaties in Force 1899, Japan, p. 358; Paraguay, p. 486.) Similar provisions are found in many other of the treaties of the United States.

By these stipulations the citizens or subjects of the foreign governments named are guaranteed the full and perfect protection of their persons and property, in the same measure and under the same conditions as citizens of the United States. That such is the case was recognized by President Arthur in his message to Congress already cited. (8 Richardson's Mess., 116). Hence, under the favored nation clause, Chinese laborers and all other Chinese in the United States are guaranteed the same rights as to their persons and property as the citizens of the United States. What are some of the rights guaranteed by the Constitution of the United States, that great charter which cannot be infringed by any legislative enactment or executive order? No person shall be deprived of life, liberty, or property, without due process of law. In all criminal prosecutions, the accused shall enjoy the right to a trial, by an impartial jury, to be confronted with the witnesses, and to have the assistance of counsel for his defense. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. The privilege of the writ of habeas corpus shall not be suspended.

In order that you may see how the treaty stipulations and constitutional guarantees are observed in the case of the Chinese, I read some extracts from an official dispatch, dated December 10th last, addressed by the Chinese Minister in this city to the Secretary of State, and by Secretary Hay transmitted to the House Committee on Foreign Affairs. After citing the treaties and a decision of the Supreme Court to sustain his assertion that only laborers are excluded under the treaty, and referring to an opinion of the Attorney General that none but those specially enumerated in Article III of the treaty can be admitted to the United States, the Minister says:

> It is most unreasonable to suppose that such was the intent of the negotiators. Did they contemplate the admission of students and the exclusion of scholars, when there are such in China of the most eminent attainments, professors and philosophers, worthy to rank with the distinguished savants of America or Europe? Did they propose to admit merchants, however small their business, and reject bankers, of whom there are in China many possessed of millions, and turn away brokers or commercial agents, of whom there are not a few in China managing the business of the largest commercial houses and banking companies of Europeans? Was it probable that they should provide for the admission and residence in the United States of tens of thousands of Chinese laborers and prohibit the entrance of physicians to care for them? Would they stipulate for the coming without limit of mere travelers, however lowly, for curiosity, and refuse the stay of noblemen or men of high professional standing? To state these questions is to refute them.

Not only a large class of Chinese of education, high rank, and business standing have thus been excluded by a simple ruling of the Treasury Department, but such obstructions and conditions are by the Immigration Bureau thrown around the admission of those who are recognized as entitled to enter the United States as in many cases amount to a virtual nullification of the treaty. The convention expressly stipulates that students, without qualification, are to be admitted. And yet the Treasury Department proceeds to neutralize this privilege by a ruling that defines a student to be—

"a person (1) who intends to pursue some of the higher branches of study, or who seeks to be fitted for some particular profession or occupation (2) for which facilities of study are not afforded in his own country; (3) for whose support and maintenance in this country, as a student, provision has been made, and (4) who, upon completion of his studies, expects to return to China." (Regulations 1900, p. 35.)

It would sound strange to read in a dictionary of the English language the only definition of student to be "one who pursues a supergraduate course and is provided in advance with a competency." And yet such is the interpretation of the word of the treaties which is followed by the Immigration Bureau. It will be seen that four conditions are attached to the admission of a Chinese student into the United States, not one of which is warranted by the treaty. The effect is that the doors of American universities and colleges are practically closed to the Chinese race.

Merchants are among the enumerated classes in the treaties entitled to admission and residence in the United States, and yet so many restrictions are applied to their entrance and residence that in many instances they amount to a violation of the treaty. Merchants and others of the exempt class are required, under the law, upon reaching the United States to produce certificates setting forth a series of facts as to their past lives, occupation, and standing in China. But this certificate, duly viséed, is not accepted as sufficient evidence of their right to enter. They are subjected to a most searching examination by the customs officials. At San Francisco, where most of them arrive, they are lodged in the loft of a wooden house awaiting this examination. It is practically an imprisonment, lasting sometimes for weeks and even months. They are not allowed to see their friends. Cases are reported where persons have become sick and no doctor was allowed to see them, and deaths have occurred.

In the examination or inquisition above noted the merchant, student, or other of the exempt class, is compelled to answer a great variety of questions and to give an account of his past life, and if any of his answers are inconsistent with the statements in the certificate, or for any cause they create suspicion as to their correctness, the applicant is refused admission and compelled to return to China. The manner of these examinations is reprehensible. Men and women are examined alone, neither their friends nor a lawyer in their behalf being allowed to be present, and the interpreter is generally a foreigner. There are so many dialects of the Chinese language that one interpreter can not understand them all; hence misunderstandings often arise and injustice is inflicted, whereas if a competent interpreter who understood the particular dialect spoken by the applicant should be allowed to be present, misunderstandings and consequent injustice would be avoided.

The certificates are required to be in the English language, but they also appear in duplicate in Chinese. The customs inspectors take advantage of every technicality to reject them, even when there is no evidence of fraud. It is made by law the duty of the United States consul at the port of departure in China "to examine into the truth of the statements set forth in said certificate" and to refuse to visé the name if not found correct. Yet if a certificate duly viséed by the consul is presented with the omission of a single particular in English, though it may appear in Chinese text, it is rejected.

To illustrate the extreme severity with which the officials carry out the law, I cite one or two recent cases. Last year several merchants came to San Francisco with a good supply of money and credit to make purchases. They were provided with the legal certificates viséed by the American consul, but it appeared that in their certificates some parts of their former career were not filled up in English, although properly filled up in Chinese. The objection was raised by the customs authorities that the certificates were defective. It was contended on their behalf that the law was complied with, as every detail was mentioned in the certificate, although some of it was only in Chinese, and it was offered to supply the omission in the English from the Chinese text, but the authorities would not allow it. The case was appealed to the Treasury Department, and the decision of the San Francisco authorities was confirmed. It was of no avail that these merchants had come 10,000 miles, that their certificates were quite sufficient as far as the Chinese text was concerned, and that the American consul who viséed the document was at fault in not seeing that all the parts were filled up in the English text. It was suggested that the merchants be released under bonds and that their certificates be sent back to China for correction. There was no suspicion of fraud, yet the suggestion was not heeded, and these merchants were compelled to return to China. It was afterwards stated that they went to Europe to purchase their goods.

One more case will be sufficient to illustrate the manner in which the law is applied. During the present year a boy of sixteen years of age, sent by his father, a merchant of good standing in Shanghai, to this country for the obvious purpose of finishing his education, and armed with a proper certificate, applied to the collector of customs at Malone, N. Y., for admission into the United States. His application was rejected, and he was obliged to return to China, notwithstanding the assurance given by the Chinese consul at New York of the bona fide student character and purpose of the boy. The ground upon which he was denied admission was not because there was any doubt as to the genuine student character of the boy, but simply because of the statement found in his certificate, which had been duly viséed by the United States consul general at Shanghai, that the boy's intention of coming to the United States was "to study the English language."

The examination above stated is not the only inconvenience of that character to which merchants and others are subjected. They are kept in confinement pending inquiries set on foot by the customs inspectors. These inquiries are often made in a surreptitious manner; the applicants for admission are not afforded an opportunity to confront those who give damaging information against them or to rebut their statements. The report of the inspector is decisive as to their admission or deportation to China, and their only remedy is an appeal to the Secretary of the Treasury in Washington, which is virtually to the Commissioner of Immigration. The report of the inspector is ex parte and the applicant can only support his appeal by ex parte affidavits, as no judicial hearing or orderly examination by counsel is allowed. The Treasury officials on appeal, however fair-minded they are, have no opportunity of hearing witnesses or taking fresh evidence, and usually disregard the affidavits and accept the report of the inspector. Would it be inappropriate for me to say that such a proceeding seems like a travesty of justice?

To send a Chinese back upon his arrival in this country is a great hardship, especially when it is based upon technicalities often without merit. It means to him loss of business, of money, and of time, as well as blighted hopes. The result is sometimes fatal.

There are other hardships suffered by Chinese subjects seeking admission to the United States which are not so much the result of injustice on the part of officials as of the laws and regulations adopted ostensibly to enforce the treaties. As already mentioned, the law of Congress requires of merchants and others coming to the United States a certificate authenticated by the United States consul at the port or place of departure. At many places in China whence they depart there is no American consul. Most of the Chinese go to Hongkong to ship for this country. It is impossible to obtain there the required certificate, it being a British port, and they not being residents of that place. It has been held by the Treasury Department that Chinese coming from a foreign port must procure the certificate of the authorities of that port and that the certificate of the Chinese consul there is not sufficient. In most instances it is not possible for the authorities of the foreign port to make out the certificate giving the facts required by the law. The only person who could do so is the Chinese consul, and under the construction given to the law by the Treasury Department this officer is not permitted to give the certificate, and the Chinese seeking to come to the United States from such foreign ports suffer great inconvenience.

I have thus far referred to the hardships suffered by the Chinese merchants and others in securing the admission to the United States which they are guaranteed by the treaties. But after they have overcome these obstructions thrown in their way by the customs officials they are constantly liable to annoyances and hardships while resident in the United States at the hands of these officials. To some of these I beg to call your attention. Chinese residing in the United States are often annoyed and harassed by overzealous inspectors and United States marshals, who without word of warning surround a community of Chinese, herd them together, and demand the immediate production of their registration certificates or other proofs of their right to remain in the country; and if no such evidence is found on their persons they are placed in confinement until a tedious process of investigation is gone through and their right to remain in the United States is proved to the entire satisfaction of the inspector or other officer of the law, as the case may be. Even merchants well known locally in the city or town they reside in are not exempt from this mode of inquisition, to the detriment of their business and annoyance personally.

One of the glaring incidents of the kind was that of Hong Sling, a merchant of Chicago, who, while visiting Decatur, Ill., last year was pounced upon by a United States officer and challenged to show proof of his right to be in the country. He gave his name, place, and character of his business and other evidence of his character as a merchant, including a letter signed by the Hon. Mr. Gage, Secretary of the Treasury, certifying to his standing as a merchant personally known to him. But the officer was not satisfied, and threatened immediate arrest unless a legal certificate was produced, although the law required the registration of laborers only, and made registration of merchants voluntary on their part. After thorough search of his own baggage, Hong Sling finally succeeded in finding his certificate, which he happened to have along with him. Then, kicking him and abusing him, the officer permitted

him to go on his way, greatly humiliated in the presence of a large crowd that had gathered around him.

Merchants doing a large business for many years in this country, and desirous of sending for members of their families in China, cannot do so unless they themselves return to China to get the necessary certificate. Neither the Chinese minister nor a Chinese consul is permitted to issue the certificates. This also works great hardships to many Chinese in this country.

Registered Chinese laborers, when they go back to China on a visit, are obliged, unless the time is extended, to return within one year. In case they want the time extended they have to send their papers back to this country to be certified by the Chinese consul at the port of departure. The papers are often lost on the way and there does not seem to be any way of replacing them. In any case, it is a tedious proceeding and liable to vexatious delays.

Chinese merchants who have settled business in this country are often denied landing upon their return from a visit to China or elsewhere, on the least pretext. Consequently their business has to suffer, in addition to the heavy expense they are put to in appealing their cases.

The foregoing somewhat tedious statement of the hardships suffered by the Chinese who seek admission to and residence in the United States, because of the laws of Congress and the regulations of the Treasury Department, might be enlarged did it seem necessary. But I think the cases cited are sufficient to demonstrate that the spirit and intent of the treaties are being defeated. It further shows, I am sorry to say, that the officials of the Government of the United States, to whom is intrusted the enforcement of the laws, treat the Chinese, not as subjects of a friendly power lawfully seeking the benefit of treaty privileges, but as suspected criminals, and that merchants, students, and others clearly entitled to residence in the country do not receive the courtesy and consideration due them, but are looked upon as offenders and suspects and treated as such. It is not becoming in me to laud the merits of my own people or to claim for them undue consideration. I may, however, without impropriety, recall the language of the President of the United States, who properly interpreted the spirit and desires of my Government when Congress at an earlier period sought to legislate in an unfriendly manner. He said:

"This ancient Government, ruling a polite and sensitive people, distinguished by a high sense of national pride, may properly desire an adjustment of their relations with us which would in all things confirm, and in no degree endanger, the permanent peace and amity and the growing commerce and prosperity which it has been the object and the effect of our existing treaties to cherish and perpetuate." (Message of President Hayes, March 1, 1879.)

The foregoing authoritative statement of facts in connection with the enforcement of the Chinese exclusion laws shows a disregard of almost all the constitutional guarantees which I have cited. The constitution provides that no person shall be deprived of life, liberty, or property, without due process of law, and yet the act of Congress places in the hands of a subordinate customs or immigration official, an executive officer without the semblance of judicial character, the execution of the treaty as to the admission of Chinese, and seeks to deprive the courts of all jurisdiction of the matter. When a ship enters the harbor of San Francisco, the Chinese on board come within the jurisdiction of the United States, and are at once entitled by treaty to the cited rights, privileges, and exemptions of citizens of the United States. And yet the writ of habeas corpus, "that dearest birthright of freemen," cannot reach them, because they are held as close prisoners, with no opportunity of appealing to the courts. We have seen that they are deprived of the benefit of counsel, they are subjected to a medieval inquisition, which is in no sense a judicial hearing, they are not confronted with the witnesses, and the courts are closed to them.

Such of them as obtain admission into the United States have no assurance that even then the guarantee of the constitution will be respected which should make them "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," as is shown in the Chinese Minister's graphic account of the raids of the overzealous officials. There are other provisions of the exclusion laws which could not be enforced against citizens of the United States under similar

circumstances; for instance, when a person is charged with the offense of being unlawfully in the United States, the law discredits the testimony of the Chinese, the very persons most likely to know the facts, and requires the innocence of the accused to be proved by a white witness; the burden of proof of innocence is thrown upon the accused; and bail is denied in cases of appeal from an order of deportation, by which act an innocent man may be kept in prison for years until his case is finally heard in the court of last resort.

These are some of the evils endured under existing laws by the Chinese in the United States, in spite of the constitutional safeguards cited, but there is a disposition manifested, not only to continue these disabilities, but to add to them more stringent legislation in continued violation of treaty stipulations. An examination of the many bills before the two Houses of Congress will make this apparent.

I have shown from a citation of the report of the negotiations of 1880 that the Chinese Government very reluctantly agreed to a modification of the treaty of 1868, which gave to Chinese of all classes free and unrestricted immigration into the United States, and consented to confer upon Congress the discretion and the power to regulate or even prohibit the immigration of Chinese laborers, but it was upon the solemn assurance of the American commissioners "that the large powers * * * would be exercised by our Government with a wise discretion, in a spirit of reciprocal and sincere friendship, and with entire justice." How far this promise has been redeemed by the Congress of the United States, I leave to you to determine, in view of the exposition I have just made. President Arthur, when he sent his veto message to Congress in 1882, called attention to these assurances, and, speaking of the treaty of 1880, said:

> This treaty is unilateral, not reciprocal. It is a concession from China to the United States in limitation of the rights which she was enjoying under the Burlingame treaty [1868]. It leaves us by our own act to determine when and how we will enforce these limitations. China may therefore fairly have a right to expect that in enforcing them we will take good care not to overstep the grant and take more than has been conceded to us. (8 Richardson's Messages, 113.)

Congress listened to this appeal of the President in 1882 and modified the proposed legislation in the terms indicated in the message. But in later years it seems the clamor of popular selfish interests has caused Congress to forget the solemn promises of its commissioners, its international obligations under treaty, and the guarantees of the Constitution.

It has been suggested that the Chinese Government, in ratifying the treaty of 1894, by virtue of Article V withdrew its objection to the acts of Congress of May 5, 1892, and November 3, 1893. A fair interpretation of that article hardly warrants such a construction. The language refers to the subject of registration and to that alone. The history of the period shows that the Chinese Government had seriously objected to this provision of the acts cited regarding certificates, and that the Chinese residents in the United States had refrained in a body from registering. In making the treaty of 1894 China secured the right of the laborers in the United States to go to China and return under certain conditions, and in return for this concession she agreed to the treaty

prohibition of the immigration of laborers and withdrew her objection to registration. That China did not accept the other provisions of the acts of 1892 and 1893 is clear from the fact that not only immediately before the signature of the treaty of 1894 its minister in the United States protested most earnestly against the provisions of the acts relating to merchants, students, etc., but the minister who came after the treaty was signed made continued protests against these provisions. (See S. Ex. Doc. 54, 52d Cong., 2d Sess., p. 31; Secretary Hay to H. R. Committee on Foreign Affairs, Dec. 18, 1901.) The only change in the treaties related to laborers, and the objections of the Chinese Government to the provisions as to merchants remained in full force.

In my discussion of this important subject I have sought to point out what are the duties and limitations of Congress under our treaty obligations and what is required of it by the comity of nations and by its own sense of international justice and fair dealing. I hesitate to descend from this high plane, which must commend itself to the sense of honor of every Senator, but at the risk of lowering the standard of discussion, I venture, in closing, to commend to your consideration a selfish view of the question, but one which vitally affects the interests and prosperity of our people. More than half a century ago one of our greatest statesmen, William H. Seward, uttered these prophetic words: "The Pacific ocean, its shores, its islands, and the vast regions beyond, will become the chief theater of events in the world's great hereafter." Impressed myself with this impending fact, after a number of visits to the Orient, in a public address in this city some years ago I expressed the belief that "there were those in my hearing who might live to see the present predominating interests of our Atlantic seaboard sink into insignificance before the great and far-reaching commerce of our Pacific coast."

I could not then anticipate the rapid march of events which has done so much to hasten this consummation—the annexation of Hawaii, the Spanish war, the acquisition of the Philippine Islands, and the expedition of an army to the capital of China. The men who control the administration of our foreign affairs have not been insensible to the significance of these events. They have realized the great opportunities that were thereby opened to American commerce and enterprise. And with a skill worthy of the best days of our American diplomacy, an assurance has been obtained from the great powers of the earth that whatever may be the convulsions of government in China, there will be maintained in that vast Empire "an open door" to the commerce of the United States.

And yet what will that avail us, if, by our own rash legislation and injustice, we ourselves close this door to our manufacturers, farmers, and merchants? President Arthur, in his remonstrance with Congress against unwise legislation which would inevitably injure our then growing trade with China, said that our country "has before it an incalculable future if our friendly and amicable relations with Asia remain undisturbed. It needs no argument to show that the policy which we now propose to adopt must have a direct tendency to repel Oriental nations from us and to drive their trade and commerce into more friendly lands."

I have no disposition to belittle the claims which American labor has

upon Congress, but it is reasonable to insist that these claims shall be made to harmonize with the principles of international justice and with other great interests of the country. It cannot be consistent with the genuine spirit of labor to violate treaties. It is certainly not in its interest to obstruct the development of our foreign commerce. It ought not to stand in the way of the entrance into China of American enterprise in railroad construction and in other directions, nor in the introduction there of our educational system and the principles of Christianity which have done so much to elevate labor and purify our civilization.

One of the most notable addresses which has recently been delivered in any part of the world was that of our honored Secretary of State, at New York, in November last, and it was with a feeling of just pride that every American appropriated to himself the declarations of that address. From the metropolis of the nation Mr. Hay sent out to the world the announcement that, though we were conscious of our giant strength, it would bring with it no temptation to do injury to any power on earth, the proudest or the humblest; and that no wantonness of strength would ever induce us to drive a hard bargain with another nation because it was weak. And, with the thundering applause of his intelligent audience, he declared the rule of conduct of our Government to be "the Monroe doctrine and the Golden Rule." I say to you, Senators, with due deliberation and all seriousness, if the legislation now in the statute books with the additions proposed shall be reenacted, it were better for our honor and our peace of conscience that the words of our First Minister had never been uttered.

APPENDIX.

I. A Review of Senate Bill 2960.

II. The Treaty between the United States and China, December 7, 1894.

APPENDIX I TO ARGUMENT.

*A Review of Senate Bill 2960 to Regulate the Immigration and Residence of Chinese in the United States.**

No limit is fixed to the operation of the Act. The right to prohibit the immigration of Chinese laborers is limited by treaty to ten years from 1894. In 1904, on due notice and in the absence of any new agreement with China, the treaty of 1868 comes again into force, and in its Articles V and VI the free and unrestricted immigration of Chinese of all classes is stipulated.

Section 2. "The entry into the American-mainland territory of the United States of Chinese laborers coming from any of the insular possessions of the United States shall be absolutely prohibited," and likewise from the mainland to the insular possessions. This is in manifest disregard of the treaty of 1894. Its Article 4 guarantees to Chinese laborers in the United States the treatment "of the most favored nation." Article I of the treaty of 1894 between the United States and Japan provides that "in whatever relates to rights of residence and travel" Japanese subjects shall have the same rights as native citizens or subjects. Article II of the treaty of 1859 with Paraguay stipulates that citizens of that country shall have the right "to remain and reside in any part" of the United States. Article I of the treaty of 1871 with Italy gives to Italian subjects the "liberty to sojourn and reside in all parts whatever" of the United States. Other similar treaties might be cited. (See Compilation of Treaties in force, 1899, Japan, p. 352; Paraguay, p. 484; Italy, p. 310.)

Section 2, lines 3 to 5, prohibits the entry into the mainland from the insular possessions, and vice versa, of "those [Chinese laborers] who have been born there and those who may be born there hereafter." The Supreme Court of the United States has decided that, in accordance with the Constitution, a child born in the United States of Chinese parents is a citizen of the United States. (See U. S. *vs.* Wong Kim Ark, 169 U. S. Reports, 649.) Congress cannot restrict the right of transit or residence of citizens within the territory of the United States.

Section 3, lines 17–21. "Every Chinese person shall be deemed a laborer, within the meaning of this Act, who is not an official, a teacher, a student, a merchant, or a traveler for curiosity or pleasure as hereinafter defined." Thiswould exclude bankers, commercial brokers, clergymen, physicians, lawyers, civil engineers, men of rank and wealth or scientists who seek residence, and many other desirable and worthy Chinese. It is clearly against the intent of the treaty, which was designed to exclude laborers only.

Section 5. An "official" is defined to be only one who is "regularly accredited as such by the home foreign government." It is well known at the Department of State that, under a long-existing practice, the Chinese Minister in the United States appoints and commissions all the consular officers in the United States.

The power is placed in the hands of the Commissioner of Immigra-

* House Bill No. 9330 is a duplicate of the Senate Bill here reviewed.

tion to prescribe rules regulating the admission of the attendants of "officials," which latter term embraces ambassadors and ministers. Such power, if it is deemed necessary to delegate it, should only be placed in the hands of the Secretary of State. This criticism applies also to Section 22, which is intended to regulate the entrance of diplomatic, consular, and other officials of the Chinese Government.

Section 6. The stipulation in Article III of the treaty of 1894 as to "teacher" is enlarged, without warrant, to be (1) "one who for not less than two years next preceding his application for entry into the United States has been continuously engaged (2) in giving instruction in the higher branches of education, and (3) who proves to the satisfaction of the appropriate Treasury officer that he is qualified to teach such higher branches, and (4) has completed arrangements to teach in a recognized institution of learning in the United States, and (5) intends to pursue no other occupation than teaching while in the United States." Here are five conditions, each one of which is made a requisite to the admission into the United States, not one of which is authorized by the treaty; and, to crown the absurdity of the proposed legislation, it is provided that a subordinate inspector in the San Francisco custom house, who knows not a single word of the Chinese language and little, if anything, of the educational institutions of that cultured people, shall pass upon the qualifications of the teacher or professor. The treaty is explicit as to the character of the certificate which the teacher must present, and no other can be required with a due regard to treaty stipulations.

Section 7. "The term student, as used in this act, is construed to mean only one who (1) intends to pursue some of the higher branches of study or (2) to be fitted for some profession or occupation (3) for which facilities of study are not afforded in the foreign country or the territory of the United States whence he comes, and (4) for whose support while studying adequate provision has been made, and (5) who intends to return whence he came immediately on the completion of his studies."

Here are four or five conditions, two being in the alternative, none of which are warranted by the treaty, which must be established to the satisfaction of the immigration inspector before a student can be admitted to the United States. Only those are to be admitted who come with sufficient collegiate or advanced education as will enable them to enter a professional school or to pursue a supergraduate course of study. It must be shown to the satisfaction of this inspector, before the student is admitted, that there are no institutions of learning in China, or in the insular possessions, in case the student comes from our islands, in which he can fit himself for his chosen profession or pursue his supergraduate studies. The inspector may not be informed of the fact, but every intelligent American conversant with the Orient knows that there are in the Imperial universities at Peking and Tsientsin and in the mission institutions at Peking, Shanghai and elsewhere in China, and in Honolulu, at least, of our insular possessions, facilities where a student may pursue a course of study in medicine, international and municipal law, theology, the classic and modern languages, engineering and other scientific pursuits. If a student applies for admission to the United States to secure a degree in medicine, law, divinity, or other profession he must, under Section 7, satisfy the inspector that he has arranged in

advance a money credit sufficient to defray his expenses for the two or three years' course required. If he comes to fit himself for the profession of medicine or divinity, he cannot, on receiving his degree, practice as a physician among his own people resident in the United States, or accept a post as preacher or evangelist in any of the various Chinese mission stations in our cities, or in the Hawaiian or Philippine Islands. (See also Section 40.)

Section 8, lines 7–9. The requirement that a merchant must have "a fixed place of business" within the United States will exclude commission merchants or brokers through which class most of the trade in China is carried on, and it will prevent merchants residing and doing business in China to come to this country to make their purchases.

Section 8, lines 14–25, p. 5, lines 1–3. It is here required that a merchant once in the United States and returning, and on coming from our insular possessions, must, before entry, satisfy the Treasury inspector that he has in advance "completed the arrangements for forthwith becoming the owner, in whole or in part, of a good-faith mercantile business." He is also required to establish to the satisfaction of the Treasury official (page 5, lines 6–17) certain facts. "by the testimony of two credible witnesses other than Chinese." In many cases of bona fide merchants these conditions will prove impossible of compliance. And it is repugnant to the ideas of justice and to orderly judicial proceedings to cast discredit upon a whole race or nationality, and it is certainly in violation of "the favored nation" clause of the treaty already cited, as no such rule is enforced against either our own citizens or those of any other nation with which we have treaties. This assertion applies to other sections of this act where Chinese witnesses are discredited.

Section 9, lines 18–20. A "traveler is construed to mean only one who has arranged for an itinerary in the United States." This clause strictly interpreted presupposes a knowledge of the geography of the United States on the part of the Chinese, not possessed by the average American, who often has to resort to Raymond & Whitcomb or Cook agencies to make out itineraries for him in his own country.

Sections 5 to 9, inclusive, by their restrictions and, in some cases, impossible conditions, practically annul the stipulation of Article III of the treaty of 1894, as to the exempt class of Chinese, not laborers.

Section 10 ostensibly seeks to make provision for the execution of Article II of the treaty, but it does what President Arthur informed Congress it was in honor and good faith bound not to do—"take good care not to overstep the grant and take more than has been conceded to us." That Article sets forth with unusual particularity for a treaty under what conditions a Chinese laborer might temporarily leave the United States and return. But this Act adds conditions not warranted by the treaty, some of them absurd an impossible of ascertainment. If a man leaves debts on his departure, it must be made to appear that his debtor is solvent on his return (page 7, line 5); that the debts do not consist of promissory notes or similar acknowledgments (lines 7–8); and that he possesses on his return the same family, property, or debt qualifications as at the time of his departure (lines 11–13); he must make his application to the Treasury officer of the district from which he wishes to depart at least one month in advance (lines 14–19), and submit all the

proofs required by the Immigration Bureau (not the treaty); furnish a photograph of himself made at the exact time and in the manner prescribed by that Bureau, at his own expense (page 8, lines 6–11); all of which requires his presence at the port of departure at least one month before sailing, although his residence may be thousands of miles away. And after all this is done, the customs official has it in his power to refuse the desired certificate which is made the sole evidence of his right to return, and if refused he has no redress in the courts.

Section 12 provides for a new registration of the Chinese laborers in the United States. All Chinese lawfully in the United States have already been compelled to undergo the process of registration, and it would seem unreasonable, vexatious, and an unnecessary expense to require a new registration. It was provided in the existing law that the registration should be without expense to the laborer, but this Act requires him to produce a photograph at his own expense. (Page 10, lines 6–7.)

Sections 15 and 16 require a certificate of all persons of the exempt class. The requirements of this certificate are set forth in much detail, and a comparison of these sections with the certificate required by Article III of the treaty of 1894 will make apparent how far the Act, to use President Arthur's phrase, "oversteps the grant and takes more than has been conceded to us." The certificate required under the existing law is drastic enough, but this is still more so. Among its objectionable requirements is that a photograph must accompany the certificate made by the official of the Chinese Government before departure from China, not always a possibility; and, besides, the photograph is confusing and its chief service is to furnish ground for captious objection on the part of the immigration officials. It will be humiliating for any self-respecting merchant or student to accept such a certificate.

Section 17 makes it the duty of the diplomatic or consular representative of the United States at the port where the Chinese of the exempt class depart for the United States to carefully examine into the facts stated in the certificate, and not to visé the same unless it shall be found correct. And yet this certificate, so endorsed by the diplomatic and consular officer, is not accepted as satisfactory by the immigration inspector, but every merchant and student is subjected to a "star-chamber" inquisition before they are admitted. Such a certificate alone entitles the holder under the treaty to admission. (See Article III.)

Section 20 first provides that Chinese merchants and others of the exempt class lawfully in the United States shall be entitled to have issued to them a certificate giving a description of their person, residence, occupation, with photograph, and other details prescribed by the Commissioner of Immigration (page 16, first paragraph), ostensibly for the convenience of the merchant or others. And then it provides that such as do not obtain this certificate shall be "rebuttably presumed to be laborers not entitled to remain within the territory of the United States." (Lines 22–25.)

Clause second of Section 20 requires (page 17) every person of the exempt class who desires to leave the United States to take out a certificate containing all the objectionable features of the other certificates, with photograph attached; and clause three (page 18) makes this cer-

tificate the requisite to his readmission into the United States. These provisions constitute a double violation of the treaty. Article II of the treaty of 1880 guaranteed to merchants and others of the exempt class in the United States the right "to go and come of their own free will and accord," as well as to enjoy all the rights of subjects of the most favored nation, and this right was expressly continued by Article III of the treaty of 1894. By the latter treaty the only evidence required for their entrance into the United States was the certificate set forth in Article III.

Section 21 regulates by a complex certificate system the entry into the United States of the wives and children of merchants, etc., and then it requires that they shall be accompanied by the husband or father. This would compel merchants in the United States desiring to bring in their families, to return to China for that purpose. The Supreme Court has decided that wives and children partake of the status of their husbands and fathers, and are entitled to entry under the treaty. There is no warrant in the treaty to limit the age of the children to twelve years. (Page 18, line 20.)

Sections 24, 25, 27, 28, 29 and 30 contain conditions and prohibitions relative to vessels and railway companies of such a strict and complex character as will make it almost impossible for any Chinese person to enter the United States, notwithstanding the treaty stipulations which guarantee them the right to entry. The arbitrary power to reject the applicant is lodged in the immigration officials, without the privilege of a judicial hearing. It has been shown that these officials resort to every possible technicality to reject applicants. Any transportation company that undertakes the risk of bringing Chinese merchants and others to our ports, subjects itself not only to the expenses of carrying the passenger back to China, but also to heavy fines (Sect. 29) and even to forfeiture of the vessel (Sect. 30.)

Section 26 relates to the transit of Chinese laborers across the territory of the United States en route to some foreign country, a privilege expressly granted by Article III, second clause, of the treaty of 1894. Under the existing practice Chinese laborers are transported across the territory of the United States in transit upon the execution of a bond by the transportation company guaranteeing their departure from the United States. Experience shows that this system has worked well and that no serious abuse of the privilege has occurred. It is now proposed to add various conditions to the existing practice, such as a certificate which the transit laborer must obtain in China, or other foreign country whence he departs, from the diplomatic or consular officer of the United States; he must also "comply with any rule or regulation" which the Commissioner of Immigration may prescribe (page 27, line 12); and power is conferred upon the Commissioner to suspend all transit sought by laborers coming from insular possessions (page 26, lines 18–22). The latter provision is a plain violation of the treaty, and the manifest effect of the section will be to practically put an end to the transit.

Section 32 authorizes the arrest of any Chinese person on the ground of a violation of any provision of the act, and upon the hearing before a United States commissioner, he is required to "establish by affirmative proof" that he has a lawful right to be in the United States (page 33,

lines 12–17); he must, further, establish this right by "the testimony of at least two credible witnesses other than Chinese" (lines 17–20); and upon his failure to do this he is to be deported from the country. Under Article IV of the treaty of 1894, Chinese of all classes in the United States are entitled to the treatment not only of the subjects of the most favored nation, but of native citizens of the United States, in all matters respecting their judicial rights. The foregoing cited conditions as to Chinese in the courts are not applied to any citizen or to any other foreign subject, and hence are in contravention of the treaty.

Section 39, second clause, makes it unlawful for any vessel under the flag of the United States to employ Chinese laborers in its crew. The vessels of all other nationalities engaged in trade with the United States may employ a Chinese crew, as many of them do. The enactment of this clause will operate as a serious discrimination against American shipping, already burdened with disabilities which make it difficult to compete with foreign vessels.

Section 40 provides that when a person admitted as a teacher, student, merchant or traveler, ceases to be of the status gaining him admission, he shall be deported. Hence if a student should become a teacher, or a merchant, having acquired a competency, retires from business, he must be deported. Such a provision is not only unreasonable, but is in conflict with Article II of the treaty of 1880, and Article III of 1894.

Section 41 prescribes a complete registry of the birth of every Chinese person hereafter born in the United States. Attention has already been called to the fact that the Supreme Court has held that a person born in the United States of Chinese parents is a citizen. Such a provision is no more applicable to persons of the Chinese race than of the Caucasian races. The certificate is made admissible as evidence in all inquiries under the act (page 38, lines 11–13). It may be readily seen what use may be made of this provision by zealous immigration inspectors and marshals. Under the constitution citizens of Chinese origin must stand on the same footing as other citizens.

Section 45 places the administration of the Act in charge of the Commissioner of Immigration, and by Section 46 it is provided that in all cases of entry or transit of laborers, merchants or other Chinese "the decision so given [of the immigration official] shall be final and not subject to review by the judicial branch of the Government" (page 40, lines 11–12), with appeal only to the Treasury Department. Herein is another disregard of the treaty stipulation, under the most favored treatment, of the right to resort to the courts. The provision would not be so flagrant, if any judicial hearing was provided before the immigration official, but the Act does not contemplate any such proceeding, and it is known that in practice the investigation is wholly *ex parte*.

In the third clause of Section 46 (page 40) in cases of claim of American citizenship, jurisdiction is given to the Federal Courts, but that is superfluous, as no legislation of Congress can deprive a citizen of his right of resort to the courts.

In cases of appeal, in the courts, only five days is allowed within which to make the appeal (Section 48); and in deportation cases it is provided (Section 50) that in cases of appeal the Chinese ordered to be deported shall remain in custody pending final decision, without bail.

In such cases one who may be declared innocent may be held in prison for two or three years. It is a harsh provision, and one which would not be applied to a native citizen or other foreigner. In cases of appeal from a decision ordering a discharge, bail may be admitted, but in a sum not less than $2,000. For the poor laborers this is a virtual denial of bail. It should be left in the discretion of the court.

Section 54 provides that no certificate of status required by the Act shall be of any value if issued by a foreign government into whose dominions Chinese are admitted without restrictions. Literally interpreted, this would mean that no certificate issued by the Chinese Government would be valid, and it would nullify the certificate required by Section 15. But it was probably intended to mean any government other than that of China. A large number of the Chinese who seek entry into the United States have heretofore come from the free British port of Hong Kong and the Portuguese port of Macao. This enactment would cut off that important line of traffic and would be a direct violation of Article III of the treaty of 1894, which stipulates for the free entrance into the United States of the exempt class, without any limitation as to the port or country whence they come.

APPENDIX II.

Convention Between the United States of America and the Empire of China.

EMIGRATION BETWEEN THE TWO COUNTRIES.

[Signed at Washington March 17, 1894. Ratification advised by the Senate August 13, 1894. Ratified by the President August 22, 1894. Ratified by the Emperor of China in due form. Ratifications exchanged at Washington December 7, 1894. Proclaimed, December 8, 1894.]

Whereas, on the 17th day of November, A. D. 1880, and of Kwanghsü the sixth year, tenth moon, fifteenth day, a treaty was concluded between the United States and China for the purpose of regulating, limiting, or suspending the coming of Chinese laborers to, and their residence in, the United States;

And whereas the Government of China, in view of the antagonism and much-deprecated and serious disorders to which the presence of Chinese laborers has given rise in certain parts of the United States, desires to prohibit the emigration of such laborers from China to the United States;

And whereas the two Governments desire to coöperate in prohibiting such emigration, and to strengthen in other ways the bonds of friendship between the two countries;

And whereas the two Governments are desirous of adopting reciprocal measures for the better protection of the citizens or subjects of each within the jurisdiction of the other;

Now, therefore, the President of the United States has appointed Walter Q. Gresham, Secretary of State of the United States, as his Plenipotentiary, and His Imperial Majesty, the Emperor of China has appointed Yang Yü, Officer of the second rank, Sub-Director of the Court of Sacrificial Worship, and Envoy Extraordinary and Minister Plenipotentiary to the United States of America, as his Plenipotentiary; and the said Plenipotentiaries having exhibited their respective Full Powers found to be in due and good form, have agreed upon the following articles:

ARTICLE I.

The High Contracting Parties agree that for a period of ten years, beginning with the date of the exchange of the ratifications of this Convention, the coming, except under the conditions hereinafter specified, of Chinese laborers to the United States shall be absolutely prohibited.

ARTICLE II.

The preceding Article shall not apply to the return to the United States of any registered Chinese laborer who has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. Nevertheless every such Chinese laborer shall, before leaving the United States, deposit, as a condition of his return, with the collector of customs of the district from which he departs, a full description in writing of his family, or property, or debts, as aforesaid, and shall be furnished by said collector with such certificate of his right to return under this treaty as the laws of the United States may now or hereafter prescribe and not inconsistent with the provisions of

this treaty; and should the written description aforesaid be proved to be false, the right of return thereunder, or of continued residence after return, shall in each case be forfeited. And such right of return to the United States shall be exercised within one year from the date of leaving the United States; but such right of return to the United States may be extended for an additional period, not to exceed one year, in cases where by reason of sickness or other cause of disability beyond his control, such Chinese laborer shall be rendered unable sooner to return —which facts shall be fully reported to the Chinese counsul at the port of departure, and by him certified, to the satisfaction of the collector of the port at which such Chinese subject shall land in the United States. And no such Chinese laborer shall be permitted to enter the United States by land or sea without producing to the proper officer of the customs the return certificate herein required.

ARTICLE III.

The provisions of this Convention shall not affect the right at present enjoyed* of Chinese subjects, being officials, teachers, students, merchants or travelers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government or the Government where they last resided viséd by the diplomatic or consular representative of the United States in the country or port whence they depart.

It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to or from other countries, subject to such regulations by the Government of the United States as may be necessary to prevent said privilege of transit from being abused.

ARTICLE IV.

In pursuance of Article III of the Immigration Treaty between the United States and China, signed at Peking on the 17th day of November, 1880, (the 15th day of the tenth month of Kwanghsü, sixth year) it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens. And the Government of the United States reaffirms its obligation, as stated in said Article III, to exert all its power to secure protection to the persons and property of all Chinese subjects in the United States.

ARTICLE V.

The Government of the United States, having by an Act of the Congress, approved May 5, 1892, as amended by an Act approved November 3, 1893, required all Chinese laborers lawfully within the limits of the United States before the passage of the first named Act to be registered as in said Acts provided, with a view of affording them better protection, the Chinese Government will not object to the enforcement of such acts, and reciprocally the Government of the United States recognizes the right of the Government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled (not merchants as defined by said Acts of Congress), citizens of the United States in China, whether residing within or without the treaty ports.

And the Government of the United States agrees that within twelve months from the date of the exchange of the ratifications of this Convention, and annually thereafter, it will furnish to the Government of China registers or reports showing the full name, age, occupation, and number or place of residence of all other citizens of the United States, including missionaries, residing both within and without the treaty ports of China, not including, however, diplomatic and other officers of the United States residing or traveling in China upon official business, together with their body and household servants.

ARTICLE VI.

This Convention shall remain in force for a period of ten years beginning with the date of the exchange of ratifications, and, if six months before the expiration of the said period of ten years, neither Government shall have formally given notice of its final termination to the other, it shall remain in full force for another like period of ten years.

In faith whereof, we, the respective plenipotentiaries, have signed this Convention and have hereunto affixed our seals.

Done, in duplicate, at Washington, the 17th day of March, A. D. 1894.

WALTER Q. GRESHAM, [SEAL.]
(Chinese signature), [SEAL.]

*"The right at present enjoyed" refers to and continues in force Article II of the treaty of 1880, except as to Chinese laborers, and is as follows:

ARTICLE II.—Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.